United Nations A/55/280/Add.1

General Assembly

Distr.: General
11 August 2000

Original: English and French

Fifty-fifth session
Item 116 (b) of the provisional agenda*
Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Elimination of all forms of religious intolerance

Note by the Secretary General**

The Secretary General has the honour to distribute to members of the General Assembly Addendum 1 to the interim report on elimination of all forms of intolerance and of discrimination based on religion or belief, prepared by Abdelfattah Amor, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 54/159 of 17 December 1999, dealing with his visit to Turkey from 30 November to 9 December 2000.

* A/55/150 and Corr.1 to 3.

** In accordance with General Assembly resolution 54/248, sect. C, para. 1, this report is being submitted on 11 August 2000 so as to include as much updated information as possible.

00-60496 (E) 171000 171000

Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of discrimination based on religion or belief

Addendum 1

Situation in Turkey

Contents

		Paragraphs	Page
I.	Introduction	1–8	3
II.	Legal aspects of freedom of religion and belief	9–45	4
	A. Constitutional provisions	9–23	4
	B. Provisions of international law	24–25	7
	C. Other legal provisions	26–45	7
III.	Policy in the area of freedom of religion and belief	46–67	11
	A. Consultations with the authorities	46–57	11
	B. Consultations with non-governmental organizations and independent Turkish experts	58–66	12
	C. Consultation with a member of theFazilet party	67	14
IV.	The situation of non-Muslim communities	68–122	15
	A. Minority communities recognized by the Turkish authorities as minorities and/or as covered by the Treaty of Lausanne	69–98	15
	B. Minority communities not recognized by the Turkish authorities as minorities and/or as covered by the Treaty of Lausanne	99–122	20
V.	Conclusions and recommendations	123–166	23

I. Introduction

1. From 30 November to 9 December 9 1999, the Special Rapporteur on the elimination of all forms of intolerance and of discrimination based on religion or belief made a visit to Turkey, in pursuit of his mandate, at his request and with the invitation of the Turkish Government.

2. During his visit, the Special Rapporteur went to Ankara (1 to 4 and 9 December), Istanbul (4 to 7 December) and Mardin (8 December) in southeastern Turkey. The Special Rapporteur had also intended to go to Midyat, but this was rendered impossible by imposition of a 4 p.m. curfew for reasons of security.

3. The Special Rapporteur held meetings with the following official representatives: the Deputy Under-Secretary, Ministry of Foreign Affairs and his colleagues; the Minister of State responsible for Human Rights; the Minister of Justice; the Minister of the Interior; the Under-Secretary, Ministry of Education; the President of the Religious Affairs Administration and members of the Higher Council for Religious Affairs; the President of the Constitutional Court; the First President of the Higher Court of Appeals; the President of the Supreme Council; the Vice President of the Human Rights Commission of the Turkish Grand National Assembly; and the Deputy Mayor of the Istanbul Metropolitan Municipality. A meeting was also held with a member of parliament from the Fazilet party.

4. The Special Rapporteur also met with religious representatives, including Patriarch Bartolemeos, Greek Orthodox Church; Patriarch M. Mutafyan, Armenian Apostolic Patriarchate; Rabbi David Aseo; Mgr L. Pelatre and Mgr. Marovitch, Roman Catholic communities; Bishop K. Agabaloglu, Armenian Protestant Church; Bishop Y. Cetin, Syrian Orthodox Church and lay representatives of these communities, as well as non-Armenian Protestants. Consultations were held with non-governmental organizations involved with human rights, including the Turkish Foundation for Human Rights, the Turkish Association for Human Rights and the Helsinki Citizens Assembly. Finally, discussions were held with the President of the Association for Kemalist Thought and several independent Turkish experts, as well as with other organizations and individuals.

5. The Special Rapporteur wishes to thank the Turkish authorities for their invitation and their cooperation. He is also very grateful to the many high-quality representatives with whom he was able to meet in the non-governmental sphere. Finally, the Special Rapporteur expresses his gratitude to the UNDP representatives in Ankara for the splendid cooperation they provided throughout his visit.

6. The Special Rapporteur focussed his attention on examining legislation and policies in the area of freedom of religion and beliefs, and on the situation of non-Muslim communities. As a first step, it is useful to present the information obtained on the numerical size of Turkey's religious communities. With respect to non-Muslims, the Ministry of Foreign Affairs has provided the following two estimates (without specifying dates):

(a) First estimate, provided during the mission

Armenians

About 50,000;

51 churches, of which 35 are open for worship; 6 of 9 churches outside Istanbul are open for worship;

19 schools, 4,000 students and 300 teachers;

17 cultural and charitable associations;

2 newspapers and 6 magazines;

Jews

25,000 (22,000 in Istanbul, 2000 in Izmir and the remainder in Ankara and Adana);

18 synagogues in Istanbul and 25 places of worship in other provinces;

3 Jewish schools with some 700 pupils;

8 associations and hospitals;

1 newspaper;

Orthodox Greeks

3,500 to 4,000;

73 churches;

19 schools, 297 pupils;

about 65 foundations;

(b) Second estimate provided after the mission

Community	*Estimated numbers*	*Percentage**
Armenian	93,500	64
Jewish	26,114	18
Greek Orthodox	3,270	2.5
Syriac	17,194	12
Others	5,628	
Assyro-Chaldean		0.43
Bulgarian		0.34
Catholic		0.04
Arab Orthodox		2.5
Total	**145,706**	**100**

* Of all minorities listed below.

7. Non-governmental sources provided the following data. It should be noted that the last census of religious affiliation and ethnic identity dates from 1965:

(a) 99 per cent Muslim, of whom 80 per cent are Sunni and 20 per cent Alawi and other Shi'ite communities,

(b) 1 per cent non-Muslim:

Armenians: about 60,000 (mainly Orthodox)

Greek Orthodox: about 2,500

Jews: about 24,000 to /25,000

Assyro-Chaldeans: about 25,000

Catholics: about 20,000 to 25,000, of whom one-half are foreigners working temporarily in Turkey, and the remainder are Armenians (about 4,000) and Melkhite and Antioch Christians

Protestants: in addition to the estimated 3,000 to /4,000 Armenian Protestants, there are about 200 other Protestants.

8. The Turkish Ministry of Foreign Affairs has not provided any information on the internal distribution among Muslim communities of different rite. However, according to non-governmental information, Alawi and other Shi'ite communities account for at least 20 percent of the Muslim population. In terms of non-Muslim communities, which account for only one percent of the Turkish population, the largest of the minority groups recognized as covered by the Treaty of Lausanne are the Armenian, the Jewish and the (very small) Greek Orthodox community. Among other communities, the Assyro-Chaldeans stand out numerically, well ahead of the Greek Orthodox.

II. Legal aspects of freedom of religion and belief

A. Constitutional provisions

1. Freedom of religion and belief and the principle of non-discrimination on the basis of religion and belief

9. The 1982 Turkish Constitution guarantees freedom of religion and belief and the principle of non-discrimination on the basis of religion and belief.

10. Article 10 of the Constitution, dealing with equality before the law, provides that all citizens are equal before the law, without discrimination as to language, race, colour, sex, political or philosophical opinion, religion or sect, or any other distinctive feature of a similar nature. As well, article 70 of the Constitution, on admission to the public service, provides that any Turkish national may enter the public service, with the sole criterion being that person's capacity to perform the tasks involved.

11. According to article 14 of the Constitution, on the prohibition of abuse of fundamental rights and freedoms, no right established by the Constitution may be exercised in such a way as to threaten the indivisible unity of the State, its territory and nation, (...) by creating discrimination based on language, race, religion or sect or by establishing, through any other means, a system of government based on one or other of these concepts or ideas. Moreover, article 15 of the Constitution, on suspension of the exercise of fundamental rights and freedoms, even in case of war, mobilization or state of emergency, declares that no one may be compelled to reveal his or her religion, conscience, thought or opinion, or be accused on account of them.

12. Article 24 of the Constitution, dealing with freedom of religion and conscience, provides:

> Everyone has the right to freedom of conscience, of belief and of religious conviction. Acts of worship, religious services and ceremonies may

be conducted freely, provided they do not violate the provisions of article 14 of the Constitution. No one may be prevented from participating in religious ceremonies, or accused for reason of his or her religious beliefs and convictions. Education and instruction in religion and ethics shall be conducted under State supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representative. No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for even partially basing the fundamental, social, economic, political and legal order of the State on religious tenets.

13. The Constitution thus protects both believers and non-believers. The High Court of Appeals, in its decision of 26 May 1986, ruled that Jehovahs Witnesses enjoy the protection of the rights guaranteed by the Constitution. The President of the Constitutional Court told the Special Rapporteur that the prohibition on religious parties was based on article 24 of Constitution. The Ministry of Foreign Affairs has stressed that, quite apart from the Treaty of Lausanne (see sect. II.B), the rights of religious minorities are guaranteed by articles 10 and 24 of the Constitution.

2. The principle of secularism

14. The Constitution, in its preamble and in the provisions cited above, protects the principle of secularism (already enshrined in the Constitution of 1936), as a fundamental principle of the State. The Constitutional Court has provided this definition of secularism:

> From a legal point of view, in the classical sense, secularism means that religion may not interfere with State (affairs) and the latter not with religious affairs. According to the Constitutional Court, secularism in Turkey is based on the following four points:
>
> Religion is not to be effective and dominant in State affairs.
>
> Where religion relates to the spiritual life of the individual, a constitutional guarantee recognizes unlimited freedom without any discrimination.
>
> Where religion goes to the spiritual life of the individual and relates to actions and behaviour which affect societal life, restrictions may be imposed and the abuse and exploitation of religion may be prohibited, with a view to protecting public order, public safety and the public interest.
>
> As the guardian of public order and public rights, the State may be given the power to control and supervise with respect to religious rights and freedoms.

15. Despite this interpretation by the Constitutional Court, the principle of secularism in Turkey is highly complex, as the following points will illustrate.

(a) The structuring of the religious sphere

16. While non-Muslim minorities recognized by the Turkish Government enjoy autonomous legal status in accordance with the Treaty of Lausanne, the State is directly responsible for administering Muslim religious affairs, through the Department of Religious Affairs, established in 1924 within the office of the Prime Minister and recognized as a constitutional institution in 1961. According to Law No. 429, the purpose of the Department is to carry out works relating to beliefs, worship and moral principles in Islam, to enlighten the public in respect of religion and to manage places of worship. Article 136 of the 1982 Constitution, referring to the Department of Religious Affairs, defines, in particular, the principles of secularism that are to be observed by the Department in the exercise of its duties:

> The Department of Religious Affairs, which is within the general administration, shall exercise its duties prescribed in its particular law, in accordance with the principles of secularism, removed from all political views and ideas and aiming at national solidarity and integrity.

In other words, this is a case where a political system based on secularism entrusts public institutions with State prerogatives to handle matters relating to one religion, Islam. This State involvement in Muslim religious affairs poses a further problem in that it seems to promote a single conception of Islam, the

Hanafi, and this could be seen as taking a position in favour of Hanafism (see sect. III). The President of the court of appeals told the Special Rapporteur that this situation could pose a problem in particular for atheists among the Muslim majority, in the sense that some of their taxes go to finance religious activities of the State.

(b) Religious education and secularism

17. The fact that the State is secular does not seem to prevent it from taking responsibility for Muslim religious education, whether through courses organized by the Department of Religious Affairs, through its schools for imams and preachers, through its faculties of theology, or through compulsory courses in religion and ethics at the primary and secondary school level (see article 24 of the Constitution). Religious instruction outside the State sphere is permitted, but the State retains the right to control it (ibid.). The third paragraph of article 42 of the Constitution also provides:

> Training and education shall be conducted under the supervision and control of the State, pursuant to the principles and reforms of Ataturk, and in accordance with contemporary standards of science and education.

Muslim religious teaching is thus essentially in the hands of the State, and this could pose a problem if such teaching were monolithic in the sense of promoting a Hanafi conception of Islam, and if its content and message were such as to be offensive to non-Muslims, particularly in the compulsory courses on "religious culture" (see sect. III). Moreover, in accordance with the Constitution, the principles of Kemalism, including that of secularism, are to govern education, and must in particular be reflected in compulsory courses on religious culture and ethics, and this could also pose the issue of Kemalism and hence of secularism as representing a truth from which there must be no deviation, in other words a kind of dogma.

(c) Wearing of the veil

18. The difficulties surrounding the notion of secularism are reflected in the issue of wearing the so-called Islamic veil in public institutions, and the attitude of the authorities in this respect.

19. The Council of State, in response to a complaint brought by a medical student against a decision of the university suspending her for one month for wearing the veil in class, found that the wearing of the veil symbolized a vision of the world contrary to the freedoms of women and the principles on which the Republic is founded.

20. In 1998, Parliament attempted to amend the law on higher education to allow wearing of the veil for religious reasons (the amendment read as follows:

> It is obligatory to have contemporary appearance and dress in higher education institutions, their classrooms, laboratories, clinics and corridors. There is freedom, however, for women to cover, due to religious belief, the neck and hair with a headscarf or turban.

21. At the request of the President of the Republic, the Constitutional Court set aside this amendment and explained that to allow female students to cover their heads on university grounds might adversely affect the public security and unity of the nation because the headscarf or turban shows who belongs to which religion. This action would prevent students from studying together and cooperating in their attempts to reach scientific truth; it would lead to differences and eventually to religious conflicts. The Court also held that freedom to wear the veil on university premises was contrary to the principle that all beliefs are equal before the law, to the extent that permission to wear the veil would be a privilege accorded to certain students only. Finally, it decided that the wearing of any form of dress considered or perceived as religious is incompatible with secularism.

(d) Mention of religion on identity cards

22. The principle of secularism and that of freedom of religion and belief may be considered at odds when reference to a person's religion is made on identity papers, a practice that was upheld by the Constitutional Court in its decision of 22 November 1979. According to the authorities, such mention is optional, but this could still pose a problem to the extent that social pressures might make it difficult to omit mention of one's religion or beliefs. In some situations, such an indication could be a source of discrimination for non-Muslims. The Minister of Justice declared that this practice is not regulated by legislation, while the Minister of Interior expressed the opinion that it is so regulated. The President of the Constitutional Court said that what is important is the fact that mention of

religion is not compulsory, while the Under-Secretary for Foreign Affairs and the Promotion of Turkey considers this to be an anachronism. The Special Rapporteur was told, after his visit, that Turkey is preparing to suppress mention of religion on identity cards (see para. 36).

(e) Nationalism

23. The Constitution enshrines the principle of Turkish nationalism. Its preamble provides that no protection shall be granted for ideas and opinions contrary to Turkish national interests, to the principle of the indivisible integrity of the Turkish entity with its State and territory, to the historic and moral values inherent in being Turkish, to the nationalism of Ataturk. Article 2 of the Constitution reaffirms the legal validity of the fundamental principles declared in the preamble, and reiterates adherence to the nationalism of Ataturk as one of the basic principles of the State. A potential problem arises here, to the extent that this nationalism is interpreted in the form of a militant policy of Turkization based on a restrictive concept of ethnic unity. Were nationalism of this kind to become official ideology it could be prejudicial to minority, non-Muslim communities, and even to Muslims themselves, if the banner of ethnic unity were associated with quasi-official status for the Hanafi conception of Islam and if the notion were thereby promoted that Turkish citizenship is exclusively for those who are ethnic Turks and who are Muslim, specifically of the Hanafi rite, by religion.

B. Provisions of international law

24. Turkey is a party to the Treaty of Lausanne of 24 July 1923. While it establishes the principle of equality for all citizens regardless of race and religion, this treaty enshrines the status of non-Muslims as minorities. It therefore recognizes both the religious identity of non-Muslim communities as well as their individual and minority rights. Articles 37 to 45 of the treaty deal with the protection of minorities. Article 37 gives to the provisions contained in articles 38 to 44 the force of fundamental laws, and consequently no law, no regulation and no official action may contradict them or take precedence over them. By virtue of article 38 of the treaty, all residents of Turkey have the right to the free exercise of any faith or belief, in private or in public, provided that such practice is not incompatible with public order and morality. Article 39 guarantees the principle of non-discrimination and authorizes every Turkish national to use any language, whether in private or business relations, in the practice of religion, in the press and publications of all kinds, and in public meetings. Article 40 guarantees the right of non-Muslims to create, manage and supervise, at their own expense, any kind of charitable, religious or social institution, schools and other teaching and education establishments, with the right to make free use of their own language and to exercise their own religion freely in all such institutions. By virtue of article 42, minorities have the right to settle any issue relating to family or personal status in accordance with their own customs. Moreover, the Turkish Government is committed to protect minority places of worship, to provide full facilities and authorizations to minority religious foundations and charitable establishments, and not to refuse approval for the creation of new establishments.

25. The Ministry of Foreign Affairs has noted, with respect to the reference to non-Muslim minorities in the Treaty of Lausanne, that the Turkish legal system does not encompass, as a rule, the concept of "minority", and that the non-Muslim minorities mentioned in the Treaty of Lausanne constitute the only exception to this rule. In fact, however, it would appear that the Turkish authorities recognize this minority status only for three communities: the Armenian, the Greek Orthodox and the Jewish. The document on religious minorities submitted by the Ministry of Foreign Affairs to the Special Rapporteur stresses, in this regard, that there are only three religious minorities in Turkey, namely the Armenians, the Jews and the Orthodox Greeks. This position poses a problem for other non-Muslim religious minorities, and for Muslims as well (see sect. III). Moreover, there are serious problems with the respect and application of the Treaty of Lausanne for the minorities who are recognized as covered by it (idem).

C. Other legal provisions

1. Provisions of criminal law

26. In this context, special mention must be made of articles 175 to 178 of the Turkish Criminal Code:

> Article 175. Whoever, with the intention of debasing any religion, prohibits or violates the performance of religious services or ceremonies shall be punished by imprisonment for six months

to 1 year and shall be fined.... If this offence is committed by using force, threat or by debasement, the perpetrators shall be punished by imprisonment for 1 to 2 years and shall be fined.... Whoever debases God, religions, the prophets or the holy books, or whoever condemns, derides or insults someone for not fulfilling his religious duties shall be imprisoned for six months to 1 year and shall be fined.... If the felony in paragraph 3 above is committed via the media, the penalty shall be doubled. In case of the incitement by media to the felony stated in article 1, the same punishment shall be given.

Article 176. Whoever pulls down or impairs or damages in any way items in temples, or uses force against or insults spiritual officials, with the intention of debasing any religion, shall be punished by imprisonment for 1 to 2 years and shall be fined.... When a felony is committed during or in connection with the performance of duty by spiritual officials, the punishment prescribed by law for that the felony shall be increased by one sixth.

Article 177. Whoever impairs monuments or similar works in temples or engravings in cemeteries, or damages tombs, shall be punished by imprisonment for 1 to 3 years and shall be fined.... Whoever defiles any of the above-mentioned objects shall be punished for three months to 1 year and fined...

Article 178. Whoever, with the intent of defamation or any other illegal intent, insults or takes partially or entirely the corpse or bones of a person shall be punished by imprisonment for 1 to 3 years and shall be fined.... Whoever, exclusive of the above acts, removes a whole corpse or a part of it, or disinters a dead body or its bones without obtaining official permission shall be imprisoned for two to six months and fined.... When this crime is committed via officials of a cemetery or graveyard or by persons to whom corpses or bones are delivered, the punishment prescribed by law shall be doubled.

2. Provisions of civil law

27. The Minister of Justice explained that the Turkish Civil Code represents translation of the Swiss Civil Code, and that this code, adopted in 1926, replaced Islamic law in personal status matters of marriage, divorce and inheritance and that it guaranteed the principle of equality between men and women. He also noted that draft legislation for a new Civil Code was under study and that this would ensure that all provisions are consistent with the principle of equality between the sexes. He referred specifically to the prohibition of polygamy and the introduction of civil marriage (as a prior condition for any religious marriage).

3. Supplementary jurisprudence

28. The Special Rapporteur was unable to obtain all of the legislation dealing directly or indirectly with freedom of religion and belief. Because of this, supplementary information provided after the visit, both by the Ministry of Foreign Affairs and by non-governmental sources, will be reviewed in this report, in order to give as complete a picture as possible of the legal situation.

(a) Indications and comments provided by the Ministry of Foreign Affairs

Legislation on unused places of worship and on lands and buildings belonging to national religious minorities/conditions for minorities to establish schools, churches, associations and foundations

29. The Ministry of Foreign Affairs has explained that lands and buildings belonging to national religious minorities may be sold, rented or used for another purpose, at the decision of the respective boards of directors, provided such decisions are consistent with legislation governing foundations. If the national religious community that is the beneficiary of the foundation ceases to exist, or if the foundation, despite warnings by the authorities concerned, does not have the means to constitute a board of directors, Law No. 2762 on foundations and provides that the management of these properties shall be transferred to the General Directorate of Foundations, which will be responsible for maintaining the property, while allowing visits to places of worship that are part of such property. Moreover, according to the Ministry of Foreign Affairs, in cases where the management of a foundation has changed hands in this way and where, within five years after that decision, the foundation succeeds in electing a new Board of Directors, it may have its status restored by fulfilling the necessary

formalities with the authorities concerned. The Ministry of Foreign Affairs noted that other establishments, belonging to minorities and religious groups, which are not covered by foundations but which have historical and cultural value, are preserved under the law on the Preservation of Cultural and National Wealth, No. 2963. These establishments are regarded as historic works of art and are under protection. These places are utilized as museums or historic venues and are under the auspices of the Ministry of Culture.

30. The Ministry of Foreign Affairs added that the Government had decided on 15 September 1999 that articles 46 and 48 of the Regulations on Foundations would no longer be implemented for the religious community foundations. That decision had been given to further enable religious communities to act in a more independent way. Thereafter religious community foundations would not be obliged to inform the relevant Administration on Foundations in writing in case they wanted to hire a lawyer to sue somebody or to protect the rights of the foundation. Nor would they be obliged to seek permission of the General Directorate of Foundations before they started constructing or repairing their buildings.

31. Regarding the conditions applicable to minorities for establishing schools, places of worship, associations and foundations, the Ministry of Foreign Affairs has provided the following information:

32. *Establishment of foundations by minorities.* The Treaty of Lausanne recognizes the legal status of establishments of religion, education, health and philanthropy belonging to minorities which were previously established in accordance with rulings of the Ottoman State. These establishments were converted into "community foundations" by the Law on Foundations, No. 2762, adopted in 1936.

33. *Establishment of associations by minorities.* Members of minorities enjoy equal rights to establish associations envisaged in the Constitution for every Turkish citizen. There are a number of associations belonging to minorities.

34. *Establishment of schools by minorities.* The statutes of the schools belonging to the minorities recognized in accordance with the Treaty of Lausanne are preserved. These schools are considered as "Foundation Schools" and continue to provide education and training at the pre-school, primary and secondary levels.

35. *Establishment of churches by minorities.* The number of places of worship recognized by the Treaty of Lausanne suffices when the population of minorities living in Turkey is taken into account. Thus it is not required to establish new places of worship. However, in the legislation, no provision exists regarding any limitations or prohibition against new places of worship for minorities. The general rule, as set out by the Law on Public Works, No. 3194, is that places of worship cannot be built just anywhere, they require to be specifically outlined in the city plans, and the needs and requirements of the social environment are also to be taken into consideration, that is, the presence of a community belonging to that religious belief, and so on.

Indication of religion on identity cards/ changing of religion

36. With respect to the identity card, the Ministry of Foreign Affairs has explained that article 43 of law No. 1547 on civil registry stipulates that all information regarding sex, names — surname, father's and mother's name — and religion of the family members should be noted on the family registration forms. The same format was introduced for identity cards. However, preparations to omit the indication of religion on identity cards are under way.

37. With respect to changing religion, the Ministry of Foreign Affairs stated that, for statistical reasons, records on all population issues were kept by the General Directorate for Civil Registry and Citizenship Affairs. That is why the information concerning change of religion is also conveyed to the General Directorate.

Legislation governing given and family names

38. The Ministry of Foreign Affairs has explained that, by virtue of article 16 of Law No. 1587, children may not be given names that might offend people or that would be considered incompatible with national culture and values. According to that Ministry, since the culture of the religious minorities recognized by the Treaty of Lausanne is accepted as a part of the national culture, those minorities are free to give their children any first or family names they wish, provided they respect the criteria mentioned above.

Treatment of missionaries

39. The Ministry of Foreign Affairs has reported that there is no direct legislation with regard to missionaries. No measures are taken against missionaries who visit houses and apartments or who open up stands to distribute publications for which a legal permit has been obtained. However, if any complaint is made by the public against such house visits, claiming that privacy and the public order are being harmed, missionaries may be taken to the police station by the local police authorities in accordance with article 11.C of Law No. 5443 on the Administration of Provinces. Following their testimony, they are released. Only in cases where they distribute propaganda material without a legal permit may they be detained.

Practice of religion during performance of military service

40. According to the Ministry of Foreign Affairs, all conscripts are free to practice their religion provided they respect military rank and discipline. Military courts have no direct competence to issue judgements on matters relating to freedom of religion and belief. Nevertheless, if a conscript refuses to execute the orders of a superior officer, on grounds of freedom of religion and belief, military criminal law provides for trial by the military tribunals. Under current law, military service is compulsory for all males. A simple declaration of conscientious objection does not constitute a crime. On the other hand, statements that slander or denigrate the Army may be prosecuted by the military tribunals. With respect to conscientious objection, non-governmental sources will be cited (see below).

(b) Supplementary information provided by non-governmental sources

41. *The 1965 law on the public service (Law No. 657)* provides, in article 48, that no criterion other than a person's qualification for the position involved may be taken into consideration in recruitment for the public service.

42. *The 1973 National Education Act (Law No. 1739)* provides, in article 4, that anyone may enter an educational establishment, without distinction as to language, race, sex or religion.

43. *Law No. 2908 of 1983 on associations* provides, in articles 5 and 76, that it is prohibited, under penalty of detention or dissolution of the association, to create associations with a view to (1) attacking the indivisible unity of the State, the country and the Turkish nation; (2) pursuing activities based on the principle or the name of a region, a race, a social class, a religion or a sect; and (3) claiming the existence of minorities based on differences of race, religion, sect, culture and language within Turkish territory, or creating minorities, by protecting, promoting or spreading languages or cultures other than the Turkish language and culture, or declaring that one specific region, race or social class or the members of a certain religion or sect will prevail or will have priority over another.

44. *The 1994 Law on the creation and operation of radio stations and broadcasting (No. 3984)* provides, in article 4, that radio and television broadcasts must seek to serve the public interest, in accordance with the following principles:

(a) They must not offend anyone's feelings by reason of race, sex, social class or religious beliefs;

(b) Broadcasts will not be tolerated if they incite the community to violence, to terrorism or to discriminatory acts based on ethnic identity or if they arouse hostile feelings within the community.

45. *Legislation does not recognize the right of conscientious objection* based on religion and belief. In this regard, the Special Rapporteur recalls resolution 1989/59 of 8 March 1989 of the Commission on Human Rights, which has been reaffirmed on several occasions, among others in resolution 2000/34 of 20 April 2000, in which the Commission recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights, and recommended that member States with compulsory military service should, where they have not done so already, establish alternative forms of service for conscientious objectors, which should be of a non-combatant or civilian character, in the public interest and not of a punitive nature.

III. Policy in the area of freedom of religion and belief

A. Consultations with the authorities

1. Governmental authorities

46. All official representatives gave the Special Rapporteur the same message, to the effect that Turkey, since the days of the Ottoman Empire, has been characterized by tolerance of the kind that favours the expression of diversity and of religious practice, applicable to all people, within the context of existing legislation (including the Constitution and the Treaty of Lausanne).

47. With respect to secularism, which is the cornerstone of the Turkish State, it was denied that this system has been the source of any friction or of religious rejection among the populace, even in rural areas. According to the Ministry of Foreign Affairs, any suggestion that Turkey is a society rooted in religious tradition and hostile to secularism reflects in fact a political attack on the country's secular nature. It should be noted, however, that the Under-Secretary of State for Education explained that, given a population where Muslims are the majority, and a republic that was preceded by such a long history, the enforcement of secularism has necessarily been a process of evolution that has sometimes encountered difficulty. Official representatives maintained that the Department of Religious Affairs constitutes a bridge between the State and religion and that its activities on behalf of Muslims should be viewed as a service provided by the State to the Turkish nation, in recognition of its religious, moral and social needs.

48. Attention was nevertheless drawn to the dangers that secularism has faced for the last 10 years in the form of religious extremism and attempts at political and religious exploitation, supported and financed by certain Muslim countries. It was explained that this phenomenon, which has made itself felt in particular through demands for wearing the veil at university, was a purely political and not a religious one, and that it was being kept under surveillance and was being handled appropriately by the State. This is why the headscarf has been banned in public institutions, in order to preserve the secular nature and neutrality of all public services, while allowing it to be worn in private. It was said that the compulsory religious culture courses are not a form of conditioning or indoctrination, but instruction conveying objective information, so that succeeding generations of Turks will be aware of religious realities and will be able to defend themselves from any religious manipulation that might undermine the foundations of the secular Turkish Republic.

49. With respect to the non-Muslim minorities recognized by the Turkish authorities as covered by the Treaty of Lausanne, namely the Armenians, the Orthodox Greeks and the Jews, it was claimed that these groups enjoy privileges such as their own educational facilities, in the context of that international agreement. It was said that there were no juridical problems in this area, that there were no restrictions on their freedom of religion and worship, and that any State intervention was consistent with legislation. With respect to the demands of certain minorities, such as the reopening of religious seminaries, it was said that, despite the privileges guaranteed by the Treaty of Lausanne, national legislation had to be respected and the State was therefore not in a position to satisfy certain communities and respond to international pressure. The Ministry of Foreign Affairs added that there are 160 foundations devoted to the social, health, religious and educational needs of different religious communities (Greek Orthodox, Armenian, Jewish, Syriac, etc.). It was explained that establishments run by national religious minorities were already operating at the time of the Ottoman Empire and that they had obtained their legal status as entities in 1936, after submitting a petition that was regarded as the equivalent of a charter constituting a foundation. On this point, it was noted that it is not possible for a foundation, for example, to invest in real property unless such powers are included in its charter.

50. Regarding the alleged confiscation of two Armenian places of worship, the Ministry of Foreign Affairs responded after the Special Rapporteur's visit that it had been confirmed by the Ministry of the Interior that the Manuk Armenian Church in Karasun/Iskenderun was open for worship. That Church was declared among those "immovable properties of cultural wealth" by the High Council of Immovable Ancient Property and Works on 18 June 1979. The Armenian Orthodox Church in Kirikhan was also open to the public and currently served as a place of worship. It had been taken under protection by the decision of the High Council of Immovable Ancient

Property and Works since 10 September 1997. The Armenian Orthodox Church located at Kirikhan is a foundation and, like all foundations, it is required to elect an administrative board. Nevertheless, the foundation in question has not elected a board since 1991, and it has not responded to warnings from the General Directorate of Foundations. Following inquiries conducted on the subject, it was found that the community served by the foundation, which numbers 11 individuals, is not located in Kirikhan and the church is not used for worship. The code on foundations requires that if a foundation has in fact no beneficiaries, its management must be transferred to the General Directorate of Foundations (as explained earlier). If that foundation should succeed in electing an administrative board within five years, it may restore its prior status after complying with the necessary formalities. In Hatay there are 15 other churches, two synagogues and three Baha'i places of worship.

51. With respect to the heavy exodus of Christians from Turkey, it was said that this situation was related solely to socio-economic factors, in the context of immigration during the 1970s, and that it involved all Turks and did not result from any religious intolerance. It was claimed that any problems raised by members of minorities were false and were in fact intended to help them obtain refugee status in Europe.

52. With respect to Orthodox Greeks, it should be noted that many Greeks left voluntarily during the population exchanges occasioned by the Treaty of Lausanne and the Cyprus issue. The Mufti of Istanbul declared that the treatment of Greeks in Turkey was linked to that of Muslims in Greece. Finally, the authorities said that they were proud of the treatment accorded to Turkey's non-Muslim minorities.

53. In response to the Special Rapporteur's question about the status of minorities other than those recognized as covered by the Treaty of Lausanne, and in particular the Assyro-Chaldeans, the Minister of State for Human Rights declared categorically that these people had no problems to complain of. With respect to the arrests of Protestants in November 1999 at Izmir, the Minister of the Interior said that they were making unauthorized use of premises for religious purposes, and that the neighbours had complained, but that the public prosecutor had decided not to press charges but to issue a warning. In any case, the Minister of the Interior maintained, this was a simple question of enforcing the law on the creation of places of worship. With respect to acts of desecration in Christian cemeteries and places of worship, as well as attacks against Christians, the Minister of the Interior qualified these as isolated acts, often motivated by theft.

54. With respect to the Alawis and the Muslim brotherhoods, the Minister of State for Human Rights and the Minister of Justice denied that they were facing any problem, noting that Turkey was founded on the principle of a single and indivisible republic and that no one had the right to call into question the social order, the Constitution and the principle of secularism.

55. With respect to the general situation regarding freedom of religion and belief, the Minister of State for Human Rights declared that Turkey was very proud and could serve as a model for other nations, and that it had no need for any lessons in this area, while the Minister of Justice suggested that his country was the most tolerant in the world when it came to freedom of religion.

2. Other authorities

56. The Deputy Mayor of Istanbul felt that there was no real religious problem in Turkey, particularly for minorities. He stated categorically that for 30 years no place of worship in Turkey had been desecrated or attacked. He maintained that any difficulties affecting Orthodox Greeks were most likely inspired by the Cyprus issue, which has set Greece against Turkey. He hoped that the international community would not interfere in Turkey's internal affairs, and that it would concern itself instead with obvious religious problems in other countries.

57. The Vice President of the Parliamentary Human Rights Commission felt that if the brotherhoods and the Alawis were free to do as they please, the result could be divisive.

B. Consultations with non-governmental organizations and independent Turkish experts

58. While the Turkish authorities stressed the tolerance that has prevailed in Turkey since the Ottoman Empire, Turkish non-governmental representatives (specializing in the area human rights)

and independent experts gave quite a different slant to their remarks.

59. According to these experts, Turkish policy in the area of religion and belief and the national religious situation are characterized in fact by complexity and paradox. Secularism is proclaimed as the cornerstone of Turkish policy, but it must be noted that this secularism does not involve a strict separation between State and religion. To the contrary, it is a militant secularism whereby the State has completely taken over religious affairs in order to prevent them from having any political influence. With a Department of Religious Affairs that has about 85,000 employees (including imams and hitaps appointed, paid and supervised by the Department) and manages thousands of mosques, pilgrimages and the whole field of religious education, and with the compulsory religious and ethics courses given in primary and secondary schools, the State exercises control and supervision over the majority religion, both for its adherents (99 percent of the population) and for its servants (i.e. religious personnel who have the status of State agents and can be given directives and instructions as needed). Islam has become, in a sense, the State's business, or to put it more accurately, Islam is so important in Turkey that the State cannot treat it with indifference, and still less with disinterest. Muslim affairs do not lie wholly outside the State sphere.

60. According to these experts, secularism, which is the real State religion, is not based on the principle of neutrality, in the sense that the form of Islam managed by the State and promoted among the population is exclusively that of the Hanafi rite. The State thus imposes a Sunni monopoly on Islam that takes no account of the diversity of Turkey's Muslim communities, and particularly the Alawis and the various brotherhoods. With respect to the Alawis, their specific religious needs appear to be totally ignored by the authorities. These experts claimed that the Department of Religious affairs includes no Alawi representatives and does nothing to meet their religious needs, but on the contrary seeks to impose on them the Hanafi conception of Islam. Moreover, in some cities, they claim, the local authorities are trying to force the Alawis to worship at the mosques run by the Department of Religious Affairs, rather than in Alawi houses of prayer. The monistic approach of the State to Islam risks arousing suspicion and discrimination among the Sunni majority against Alawis who express their own religious convictions. In some cases, Alawis have even been subject to violent attacks by Sunni extremists: reference was made to such involvement in the deadly fire at a Sivas hotel in 1993 that killed 37 people during an Alawi festival, reflecting a clear failure by the State to fulfil its duty to protect the public.

61. In the end, to judge from the statements of non-governmental experts, the State would appear to wield control over both secularism and religion. Any understanding of the religious situation in Turkey must also take account of Turkish nationalism, in particular as it is expressed by the Turkization policy, the impact of which is felt by non-Sunni and/or ethnically non-Turkish Muslim communities, and in particular by non-Muslim minorities. Several Turkish experts maintain that Turkish nationalism lies behind the intolerance of Turkish secularism and of society in general, and that this constitutes regression compared to the Ottoman Empire. The experts offered the following information:

62. In its relations with Europe, the Ottoman Empire had to deal with the question of its non-Muslim minorities in the context of European claims to hegemony, often exercised under the pretext of providing protection for these communities. In these circumstances, Turkish society felt itself weakened and under threat and attempted to find scapegoats within its midst, in this case the Christians. According to these experts, the Turkish ethnic component was seen as the only means for creating a new State, in the face of the Ottoman Empire's disintegration. One component of the nationalism that was expressed at that time was to reject the Christian minorities as a danger. This situation laid the basis, among the elite and within the State, for a kind of paranoia that manifested itself in an anti-minority policy. According to these experts, the Ittihat party sought to create a nationalistic Turkish bourgeoisie but, given the difficulties in doing so, it took advantage of the conditions prevailing during the First World War to eliminate the greater part of the Armenian community (1915) and to confiscate their property and transfer it to a new local elite. Similarly, according to these experts, when it came to the Greeks in the Aegean, the State, acting on the basis of nationalistic ideas, drove out the Greek community by instigating night-time attacks on farms, and popularized its efforts by mobilizing the Muslim religion against the Christians.

63. After the establishment of the Republic, according to these experts, the State pursued this nationalistic bent, including its anti-Christian component. They pointed to the following events, in particular: in 1932, legislation prohibited Greeks from practising certain professions (for example, law); in 1942, a wealth tax was aimed primarily at non-Muslims, who were economically very active, in an effort to Turkicize the economy by imposing prohibitive taxes that forced people to sell their property; in 1955, anti-Christian riots broke out, apparently linked to the Cyprus issue (a bomb was placed by an official of the Ministry of the Interior at the family home of Ataturk in order, it is alleged, to provoke attacks on Christians); in 1964, as a result of tensions over the Cyprus issue, Turkey broke its agreement with Greece and prohibited all commercial dealings by Greeks holding a Greek passport, leading thereby to the departure of some 40,000 Greeks; in the early 1980s, official television broadcasts used the terms "Armenian" and "Greek" as insults; in the late 1990s, the Minister of the Interior maintained publicly that Ocalan, the leader of the PKK, was of Armenian origin. These events occurred in parallel with Turkization campaigns promoting, for example, the slogan of "one language, one race, one culture".

64. According to these same experts, as a result of the isolation of Turkish society, particularly at the beginning of the Republic, and of the events and policies described above, the State developed within itself deeply xenophobic feelings explained, in part, by the perception of European interference in the last days of the Ottoman Empire. It must be stressed that, as distinct from the Christian minorities, the Jewish community has generally enjoyed satisfactory treatment to the extent that after the collapse of the Ottoman Empire the land claimed by the Jews lay outside Turkey, in contrast to the territorial claims of the Armenians and Greeks. The current satisfactory status of the Jewish minority also reflects the positive effects of rapprochement between Turkey and Israel, particularly in the military sphere.

65. Finally, according to the experts, the Christian minorities, in comparison with the Jewish community, appear to be faced with a kind of "steamroller" effect that is driving them to leave en masse, for reasons entirely unrelated to economic considerations. These minorities are also the victims of a generalized social intolerance, particularly among people in rural areas who are strongly attached to their own religion but who have no sense of respect for other religions. This reflects the direct fallout of State policies towards minorities, the historical events described above, and the negative impact of some of the media, which have continued to promote a message of intolerance towards the Christian minorities.

66. With respect to the danger of political exploitation of religion by extremists, several non-governmental representatives expressed their concern over this phenomenon. It was suggested that, because of political concessions, the Islamists had been able to use the media to take over control of society and even of State institutions (particularly in the area of justice and education). In this respect, it was claimed that the Fazilet party, which is currently represented in Parliament, was merely the successor of the Refah, which was banned by the Constitutional Court in January 1998 for attempted subversion and imposition of a theocratic state. Several representatives maintained, nevertheless, that there was little risk of establishing a theocratic state, given the role of the Army as the guardian of secularism. Yet generally speaking, many representatives deplored the fact that Islam was being used as a tool of political exploitation by all players in the country's political life, both in government and within the political parties, particularly the Fazilet, which was seeking to recruit not only Turkish society but also the Army, the power of last resort for Turkish democracy. This paradoxical situation demonstrates, according to several experts, that Turkey has not yet been able to create a true secularism either of ideology or of action.

C. Consultations with a representative of the Fazilet party

67. While the governmental authorities explained their position in terms of secularism as the cornerstone of the Turkish State, and cited the dangers inherent in attempts to exploit religion for political purposes, particularly through demands for wearing the veil in public institutions, a representative of the Fazilet party declared that, since 28 February 1997, the State had been interfering in internal religious affairs through direct intervention by the military and by the Prosecutor of the Public Safety Courts against a female deputy (of Turkish and American nationality) who was wearing the veil in Parliament. He saw in this a serious breach of human rights, representing an attack on the

fundamental right of freedom of religion. He declared that the situation was a result of the actions of ideologically motivated bureaucrats and in particular of certain cells that promote Kemalism and rail against the threat of a theocratic state. He concluded that people are much attached to religion — as shown in the rise in pilgrimages, the increasing numbers of children enrolled in imam schools and the number of mosques (some 1500) that are being built each year. He also stressed that this attachment to religion did not exclude adherence to the principles of Ataturk. He felt that, in practice, it was impossible to exploit religion for political purposes in Turkey.

IV. The situation of non-Muslim communities

68. To the extent that the status of Muslims depends on the Department of Religious Affairs, and hence on the State, and since their situation has already been examined (see sect. III), the Special Rapporteur has decided to devote his attention to the status of non-Muslim minority communities. The treatment accorded by the authorities, and that resulting from the attitude of society towards minorities, in the broad sense of the term, shed considerable light on the current status of implementation of international instruments relating to freedom of religion and belief. The following information reflects consultations with religious and lay representatives of these communities, as well as written reports received from them.

A. Minority communities recognized by the Turkish authorities as minorities under the Treaty of Lausanne

1. The Greek Orthodox minority

69. The Greek Orthodox Patriarch, Bartolemeos I, declared that the Greek Orthodox community (consisting of persons with Turkish nationality) enjoyed full freedom of religion and worship, but he related the following problems that his community faces in the area of religion.

(a) Title of the Patriarchate

70. From a historical viewpoint, the Patriarch was the bishop of Constantinople, the capital of the Byzantine Empire, and the second most important Christian leader after the Pope in Rome, according to the Second Ecumenical Council of Constantinople in 381. The Patriarchate was only one of the four patriarchates of the Early Church (which were located in Constantinople, Alexandria, Antioch and Jerusalem), but it was by far the most important. For these historical reasons, the proper title of the Patriarchate, as recognized by all Christian institutions, is the Ecumenical Patriarchate of Constantinople. It should be noted that, since 1453, the Patriarchate has been under Turkish rule, and that the constituencies of the Patriarchate include the Orthodox Greeks of Turkey, the archdiocese of America, the Athos Peninsula, the Greek Orthodox churches of Western Europe and the Orthodox Church of Australia. These are the historical facts relating to the canons of this church. The Turkish authorities do not accept this title, either the term Ecumenical or the reference to Constantinople, which was renamed Istanbul in 1930. The Under-Secretary of State for Foreign Affairs declared that this title is not consistent with the provisions of the Treaty of Lausanne, and that the Patriarchate is a Turkish institution. Patriarch Bartolemeos insisted that the title of "Ecumenical Patriarchate of Constantinople" was in no sense a sign of political aspirations, but a simple description of the religious duties incumbent upon the Patriarchate, which is indeed located in Istanbul (and is commonly referred to as the Patriarchate of the Fanar, because of the site of its premises) but was historically known as the Patriarchate of Constantinople.

(b) The legal status of the Patriarchate

71. The Patriarchate does not have the status of a legal entity.

(c) Religious training institutions

72. With the closure by the authorities of private religious training institutions in 1971, the Patriarchate lost the use of its seminary on the Island of Halki. The Patriarchate has thereby been deprived of the means for training new clergy (from among whom the next Greek Orthodox patriarch in Turkey will have to be selected). The Patriarchate has therefore being compelled to train its religious personnel abroad, a solution that is far from ideal, because most of these people do not return to Turkey. According to the Patriarch, reopening the Halki seminary is essential for the future of the Patriarchate itself and for the Greek Orthodox community.

(d) Properties

73. Patriarch Bartolemeos gave the Special Rapporteur a copy of a memorandum that was submitted to the Turkish authorities. After referring to the many religious, charitable and educational institutions dependent on the Patriarchate, the memorandum goes on to note that those institutions were started and administered by Imperial decree for most of the Ottoman period and were finally granted corporate status in 1913. Further legal arrangements and legislation in the early years of the Turkish Republic classified these institutions as foundations without ever drafting a charter for them. Two declarations of the foundations' estates were submitted by the Lausanne minorities in 1913 and 1936 to enable the former to receive titles of ownership for their real estate possessions, which had been up to those times held in the custody of various trustees.

74. The document further reads:

> Subsequently, more pieces of real estate were acquired by the said foundations, usually through donations, wills and direct purchases. In each case, titles of ownership were received following court verdicts upheld by appeals courts to the effect that the foundations were competent to own real estate and that the acts of will, donations or purchases were duly performed. Again in each case the provincial governor's office would instruct the office of land registry in writing to register the transaction and hand in the titles of ownership to designated administrators of the foundation, who would receive them in its name.
>
> Beginning in 1974, the same courts that had approved the acquisitions reversed their decisions and voided the above transfers of ownership on the grounds that real estate acquisition was not expressly mentioned in the said foundations' charters. The courts stipulated that the declarations submitted in 1936, which were merely listing each foundation's estate and finances for the previous year without any mentioned whatsoever pertaining to their mission, line of activities, administration, or other details commonly found in such documents were to be considered as charters.
>
> As a result of this reversal, all real estate property acquired after 1936 reverted to its previous owners, long since dead. In a few cases, relatives inherited properties, while in the vast majority of cases, the State assumed possession of this 'abandoned' property. Appeals to the Turkish Government during the last 25 years have extracted promises to introduce legislation that will reinstate ownership of the lost properties albeit with no concrete results so far. Meanwhile, litigation is still continuing although most legal means have been exhausted. Permanent loss of property acquired after 1936 can have devastating effects for some foundations. Baliki Hospital, a 650-bed facility run by the Greek community in Istanbul and providing in- and outpatient care to well over 35,000 people annually regardless of creed or national origin and free of charge for the needy, relies heavily on real estate income to meet operating expenses. Yet the hospital has lost possession of 132 properties, which make up the majority of its endowment.
>
> According to the Turkish Civil Code and the Foundations Act, anyone is free to start a foundation and assign its mission. Since minority foundations were not legal entities until the beginning of the 20th century, and some of them date from time immemorial, they have no duly filed charters. At no time after the passage of the above acts were those foundations asked to submit a charter, which according to the same laws above is supposed to express solely the intentions of the founders. The courts arbitrarily interpret the 1936 financial statements as the foundations' charters.

75. Quite apart from the attitude of the courts, as described above, the authorities, through the General Directorate of Foundations, have taken advantage of the legislation on unused properties to appropriate the properties and places of worship of the Greek Orthodox community, in a unilateral and often arbitrary manner, and have been using some of these properties for revenue-generating purposes. For example, the Patriarchate had sought to transform its orphanage on Princes' Island into a hotel. The General Directorate of Foundations dismissed the establishment's board of directors and declared that the Patriarchate had no rights to this foundation. Legal proceedings on this matter are now under way. Similarly, in the Galata quarter of Istanbul, four Greek Orthodox Churches were reportedly expropriated by this same authority. It was noted that in most cases the Patriarchate has lost

its case in litigation proceedings. It should be added that the boards of directors of the Patriarchate's institutions (schools, hospitals, places of worship) face serious difficulties. From 1968 to 1991, and again since 1992, the authorities have failed to authorize elections, thereby making it impossible to replace board members who have died or who have left Turkey. This has posed problems for the management of these institutions, and could be interpreted by the General Directorate of Foundations as non-utilization of property. The General Directorate of Foundations, indeed, appears to be held in fear by the Greek Orthodox community. While expressing his readiness to turn over properties no longer needed by his community, the Patriarch declared his opposition to any move to confiscate them.

(e) Educational establishments

76. The Patriarchate is facing difficulties in administering its schools and in enrolling students. Its institutions must be administered by a "Greek headmaster" of Turkish nationality, seconded by an assistant headmaster of Turkish nationality who is not an Orthodox Greek. The authorities often fail to appoint a headmaster, thereby leaving the school's management in the hands of the Turkish assistant headmaster. Moreover, according to Turkish regulations, for a child to be enrolled, he or she must have a Greek second family name and at least one Greek parent. In other words, children of parents belonging to other Christian confessions are not allowed to attend the schools of the Patriarchate.

(f) Attacks on Patriarchate property, desecration of cemeteries and personal assaults

77. Greek Orthodox religious dignitaries and sites (places of worship and cemeteries) have reportedly been the target of acts of violence, including bomb attacks (particularly against the Patriarchate's headquarters), desecration and an assassination (see the report of the Special Rapporteur (E/CN4/1999/58)). Despite these serious incidents, the security services responsible for investigation have never succeeded, according to Greek Orthodox spokesmen, in identifying and arresting the people responsible for such acts.

78. These obstacles and attacks and the prevailing climate of insecurity stem in large part from official policy towards the Greek Orthodox minority (see sect. III.) and the Cyprus conflict, for which of course the Greeks of Turkey insist they have no responsibility. As a result, however, the Greek Orthodox community is virtually on the point of disappearance. The Patriarch has stressed that the departure of Orthodox Greeks has nothing to do with economic factors, but rather with their condition as second-class citizens. As he sees it, Orthodox Greeks comply with their national obligations but they are not allowed to enjoy all their rights. The Patriarch expressed the wish that his flock, and the entire Greek Orthodox community, should enjoy the legitimate rights of Turkish citizenship and that they should be protected from the tensions that often arise between Turkey and Greece.

79. As positive developments, the Patriarch pointed to the fact that the prohibition (in place from 1973 to 1978) against issuing him a passport had been lifted and that for the first time there was no interference by the authorities in the most recent election of the Patriarch. He also noted that minorities have recently enjoyed access to the media, for example to the ATV network, which sponsored a forum on policy towards minorities. As well, the most important representatives of "religions of the book" met at Tarsus on 10 and 11 May 2000, where they issued a declaration stating that they "live in peace and repose" and that while "there are some problems regarding freedom of religion and conscience, freedom of faith, education, culture and religious practices in all parts of the world.... these problems are not insurmountable" (see Annex 1).

2. The Armenian minority

80. Most of the Armenian community belongs to the Armenian Apostolic Church. There is however a minority of Armenians who are Catholic or Protestant.

The Armenian Orthodox Patriarchate

81. The Armenian Patriarch began by stressing that his followers enjoy freedom of religion and worship without interference from the authorities. He then went on to explain the difficulties facing his Patriarchate and his community, and the direct impact that these have in the religious sphere.

(a) Legal status of the Patriarchate

82. The Patriarch recalled that, as with other minorities, the Armenian Patriarchate has no legal status as an institution. In practice, the Patriarchate is recognized by the authorities, and indeed when the Patriarch was elected the Turkish Government sent a

letter recognizing the election results and authorizing the Patriarch to wear religious habits in public (the Hat Law and the Law relating to Prohibited Garments of 1934 emphasized that religious clothing should not be worn outside religious places). This was, nevertheless, merely de facto recognition, with no legal effect, and it has posed some real difficulties: for example, some authorities have refused to accept the Patriarch as a valid representative, because of the Patriarchate's lack of legal status, and the courts have on occasion adopted a similar attitude, thereby denying it legal recourse.

83. This precarious status of the Patriarchate prevents it from legally owning property and receiving revenues, and obliges the Patriarch to act solely in his personal capacity. He must appeal to his followers for funds to cover the many financial burdens involved in supporting religious personnel, places of worship, schools and other establishments run by the community. The Patriarchate must also act through foundations, which have legal status but which remain exposed to the difficulties described above (paras. 73 to 75).

84. The Patriarch said that he understood governmental concerns that granting legal status to non-Muslim minorities might lead to similar demands by Muslim religious dignitaries. He insisted, however, that while citizens from the religious minorities enjoy equality before the law with other Turkish citizens in terms of economic, social and religious freedoms, the same freedoms must extend on an institutional basis to the minority communities.

(b) Religious training institutions

85. As with the Greek Orthodox community, the Armenian Patriarchate no longer has a seminary for training clergy. Consequently, the Patriarchate currently has only 24 priests in Istanbul, serving 38 churches. Again, the Patriarch noted the authorities' concerns that allowing non-Muslim minorities to have their own private religious training institutions would lead to similar demands by Muslims, with the potential risk of religious extremism that might emerge in private Muslim religious institutions. The Patriarch has therefore initiated a private dialogue with the education authorities for establishment of an Armenian religious department in a State university.

(c) Properties

86. The problems described by the Greek Orthodox Patriarch concerning the attitude of the courts and of the General Director of Foundations and the confiscation of community properties are of similar concern to the Armenian Patriarchate. One case was mentioned in which a place of worship at Hidyat was confiscated even after the Armenian community had decided to offer it to the Turkish authorities. Under the circumstances, the Patriarch considered this confiscation to be a totally improper act.

87. According to the Patriarch, a second tourniquet on Armenian-owned foundations is slowly being applied through the antiquated system of electoral districts within Istanbul, where Armenians no longer cluster in the same residential areas. Under current Turkish legal restrictions, those who have moved away from these neighbourhoods are no longer eligible to vote for or serve on the administrative boards of the respective trusts. As a result, elections are barred indefinitely, financial transactions blocked and the trust in danger of being closed down by the State. In the face of these restrictions, the Patriarchate is unable to establish, much less to build, places of worship in new Armenian neighbourhoods.

88. The Patriarch added that a further dilemma was posed by a 1981 decree requiring all Armenian religious trusts to shoulder a five-percent tax to pay for government inspections and audits, while Greek and Jewish trusts were exempt. Similarly, non-profit Armenian institutions such as schools and hospitals were required by the Ministry of Finance to pay corporate taxes, since those community charities charged for their services. However, all these trusts were in fact debit operations subsidized from within the community.

(d) Educational establishments

89. As with the Greek Orthodox community, Turkish curricula and assistant headmasters ensure that education given is in accordance with Turkish standards.

(e) Election of the Patriarch

90. In response to the Special Rapporteur's request for information on interference by the authorities in the election of the Patriarch (see E/CN.4/1999/58), the Patriarch replied that his church had no concordat with

the State and that successive governments since the establishment of the Turkish Republic had intervened in the appointment and election of the Armenian religious leader (who must be of Turkish nationality). He noted that last year his election had encountered obstacles because of the hostility of a police chief in the Governor's office but that, faced with protests from the Armenian community, the authorities in Ankara had resolved the situation. The Patriarch hoped that legislation would be adopted to make it clear that the election process was not to be dependent on the authorities.

91. More generally, the Patriarch called for a thorough updating and reworking of the regulations and bylaws governing minority foundations, most dating back to the 1930s. The reform of legislation dating from the early days of the Republic, and thus bearing the stamp of Turkish nationalism, would help to remove obstacles to the full enjoyment of the Patriarchate's legitimate rights. The Patriarch concluded that such a request from a minority community was unlikely to be adopted as a priority by lawmakers, but it must be recognized that minorities constitute the showcase of any democracy.

Armenian Catholic and Protestant churches

92. Representatives of the Armenian Protestant Church declared that they faced no obstacles to their freedom of religion and worship, but they referred to the same difficulties as those cited by the Armenian Orthodox Patriarch concerning the lack of legal status, religious training institutions, and obstacles and attacks affecting their property and educational establishments. Similar information was given by the Armenian Catholic Church.

93. For example, it was reported that a Protestant primary school in Gedik Pacha was confiscated in 1974, even though the Protestant Church had title to the property.

94. The Protestant Church representative also noted that both the security authorities and the education authorities prohibited any child not recognized as Armenian from attending Armenian schools. Children have therefore had to be withdrawn from the schools, even though most of them were in fact Armenians (following the events of 1915, many Armenians converted to Islam to escape death, and then, having moved to the major cities, they returned to the Christian faith; however, these facts are not recognized by the authorities). It was suggested that the situation constituted discrimination, since, in contrast, anyone may attend French or German schools in Turkey.

95. The churches also face serious obstacles to their proselytizing activities. K. Agabaloglu, the pastor responsible for the Protestant church in Istanbul, related a personal case. On 24 December 1997, he complained over the radio that it was prohibited to hand out Bibles in public to passers-by, while the distribution of the Koran was considered a public service. Following this statement, the Governor filed charges against the pastor, seeking a sentence of one to six years' imprisonment for slandering the Republic. The trial dragged on for a full year and a half, and was then halted because of an amnesty decree. However, the fact of this dismissal has not removed the obstacles to Christian evangelism, and any further statement by the pastor about these problems would, according to him, expose him to prosecution by the authorities.

3. The Jewish minority

96. Representatives of the Jewish community declared that they enjoyed full freedom of religion and worship. They confirmed that the Rabbinate has no legal status, but that it is recognized de facto by the Government. When asked about confiscation of community property by the General Directorate of Foundations, in light of the interpretation given to the 1936 declaration of assets, as confirmed by the courts, and the "non-utilization" of community property, these representatives noted that the concept of "non-utilization" is a loose one and that all minorities face the same situation. They said, however, that their purchases of property since 1936 had not been affected, thanks to the creation of new foundations or associations. They referred to difficulties of bureaucratic delay that they had occasionally faced in obtaining approval for property renovations, but noted that their applications were eventually approved.

97. The Jewish representatives declared that their community encountered no anti-Semitism either from the State or from society, except for a few right-wing newspapers. Moreover, attacks on their places of worship had been very rare, and were committed by foreign elements.

98. Finally, the Jewish representatives were unanimous in insisting that the situation of their

community was fully satisfactory. They also indicated that Turkish legislation, jurisprudence and administrative procedures posed no problem for them, but that they were sometimes employed in a discriminatory manner against other non-Muslim communities.

B. Minority communities not recognized by the Turkish authorities as minorities and/or as covered by the Treaty of Lausanne

99. The Special Rapporteur looked into the situation of non-Armenian Catholic Protestants, as well as that of the Syriacs.

1. Catholics and Protestants

100. While the non-Armenian Catholic and Protestant communities are not recognized by the authorities as minorities and/or as covered by the Treaty of Lausanne, their followers must enjoy the constitutional guarantees of freedom of religion and worship that are accorded to all citizens. Apart from the problems stemming from the lack of corporate legal status for the Catholic Church (despite the establishment of diplomatic relations with the Holy See in 1960) and the Protestant Church, religious manifestations face other difficulties as well.

(a) The Catholic community

101. The Catholic community enjoys freedom of worship, but only within confined spaces, i.e. essentially within Catholic places of worship and other religious establishments. Thus, any pastoral work among Muslims may be regarded as religious propaganda and incitement, and hence liable to be prohibited by the police. Proselytizing is in fact severely discouraged: this reflects the position of the authorities and their narrow interpretation of secularism, but it also betrays a general intolerance among important elements of society who tend to see in any public show of faith, other than Muslim, an attempt at conversion, which is in the popular mind unacceptable.

102. In the case of priests and nuns, as with other minorities, the wearing of religious habit in public is formally prohibited (apart from the senior religious leadership). Similarly, the Catholic Church is not allowed its own religious training institutions. Difficulties have been encountered in obtaining visas and visitor permits for foreign religious personnel. Moreover, the appointment of bishops is constrained by legislation prohibiting foreign authorities from designating the leader of a religious community in Turkey.

103. With respect to property, it was reported that the courts and the General Directorate of Foundations were moving ahead with further confiscations. It was noted that in 1993 a "joint commission" was created to conduct political consultations: these were held at the Vatican in 1993 and 1996, and the outcome included an academic cooperation agreement between the University of Ankara and the Jesuit Consortium Gregorianum and the reopening of the chapel at Tarsus (which the State had previously been using as a military depot). In most cases, however, the State has taken possession of the property or prohibited its use for other purposes.

104. With respect to educational establishments, the rule requiring appointment of a headmaster from the minority community and a Turkish assistant headmaster remains in force. As regards the compulsory religion and ethics course, exemptions may be granted for Christian children. However, since most pupils in Catholic schools are Muslims, Christian parents are hesitant to seek such exemption for their children, for fear that they will be criticized or feel excluded by their Muslim classmates.

105. Catholic representatives concluded that their community was in a very precarious position and that it was essential to secure a clearly recognized legal status for the Catholic Church. It was suggested that the refusal of the authorities to yield on this point, on the grounds that this would be unconstitutional and might provoke similar demands by Muslims, was unfounded, since the Muslim community was in fact represented by the Department of Religious Affairs. The problem was said to lie with the interpretation of Turkish secularism, which seeks to control religion and relegate it to the private individual sphere. While accepting that the purpose of Turkish legislation is to combat Muslim extremism, these representatives noted that the law also affects non-Muslims who seek nothing more than to exercise their rights, including their religious rights, without interference by the authorities. Finally, they complained that the Catholic Church is compelled to fight continuous battles just to maintain what is, in fact, an unsatisfactory status quo.

(b) The Protestant community

106. The non-Armenian Protestant Church in Turkey represents a community of recent origin (dating back about 30 years), consisting essentially of people of Turkish origin, and therefore frequently Muslims, who have converted to Christianity.

107. The active proselytizing of this community in its search for converts poses a problem both for the authorities, whose restrictive interpretation of secularism opposes religious influence in the public sphere and whose concept of nationalism draws a close association between Turkish ethnic identity and the Muslim religion (see sect. II), and for society at large, where this brand of nationalism is broadly accepted. It also tends to incite religious extremists, who for example committed bomb attacks in 1996 and in November 1999 against Protestants, and political extremists, who associate Protestantism with American imperialism.

108. The reaction of the authorities to Protestant religious activities led, on 12 September 1999, to the closure of a building that was rented and used as a place of worship by Protestants, and the arrest of some 40 people, officially because of complaints from neighbours. The public prosecutor finally decided not to pursue charges. The Protestant representatives maintained that the charges laid by the police were unfounded since, on one hand, no complaints had actually been received from neighbours (otherwise the public prosecutor would have had to act) and, on the other hand, because the rented hall was independent of the main building and had a separate entrance, which meant that they were not obliged to seek the prior agreement of neighbours, as the police insisted. Moreover, two weeks later, at Zeytinburnu, the police again moved to close a hall used as a place of worship, citing the law on public gatherings.

109. As the Protestants see it, these events constitute a development that is difficult to interpret in any categorical way, but that would seem to reflect the intervention of certain authorities on the basis of their own religious or secular views.

110. With respect to the refusal to recognize the Protestants as a religious minority, and the failure to grant them legal status, the Protestant representatives pointed out that they could not conduct their activities officially as a Protestant community, and hence it was impossible for them to acquire places of worship and other religious properties on that basis. The community was therefore obliged to rent premises, either through a community member acting in his private capacity, or through an association, without mention of any religious connection. Moreover, they said, while the police may tolerate Protestant activities within such premises, they are quick to prevent any public manifestations, and have for example forbidden any sign bearing the word "Protestant".

111. When it comes to foreign religious figures invited by the Protestant Church, they must in effect apply for a tourist visa.

112. With respect to educational establishments, the Protestant representatives declared that their children were entitled to an exemption from religious and ethics courses, but that the compulsory nature of those courses constituted a form of pressure on families and children, since those who sought exemptions risked rejection and ostracism by the majority. They also reported that they had submitted a complaint to the Minister of Education concerning school textbooks that promoted, as they saw it, a message of intolerance again non-Muslims who, through references to the Crusades, were insidiously accused of hostility to Islam, and that portrayed as well a vision of Muslim Turks constantly triumphing over non-Muslims. Their demands for revisions to these textbooks have been met, to date, with silence on the part of the authorities.

113. Finally, the Protestants deplored the uncooperative attitude of the authorities, who have rejected all efforts to engage in dialogue, and they feared that their difficulties were likely to grow as their community expands. What they wanted was to be recognized as a religious community and to enjoy their rights to proclaim their religion freely.

2. Syriacs

114. It should be noted that the information gathered from Syriac representatives reflects as well the situation of the rest of the Assyro-Chaldean community, Catholic and Protestant alike.

115. The Syriacs are not recognized by the authorities as a minority covered by the Treaty of Lausanne, despite their historical presence in Turkey. They therefore enjoy none of the rights of a religious minority, although they should, in principle, be covered by the constitutional guarantees relating to freedom of religion and worship. The Syriac representatives said

that, while the authorities respected their freedom of religion, it was nevertheless difficult for them to exercise that freedom. In particular, they pointed to the lack of any legal status for the Syriac community.

116. The community has no religious training seminar and this poses a serious problem, since the corps of clergy is ageing and the authorities have prohibited the replacement of any deceased clergy by clerics from abroad. The situation thus threatens the very survival of this community, since its religious identity will gradually disappear as the present clergy pass on.

117. With respect to places of worship, the authorities have imposed restrictions on the renovation of churches and monasteries in the Turrabdin region of southeastern Turkey. The authorities sometimes justify these restrictions in the name of preserving a historic landmark. Yet in many cases this stance in fact seems to represent interference by the authorities, inspired by a nationalism that rejects all minorities, particularly Christians. A clear example of the situation can be seen in the fact that the Syriacs were prohibited from expanding the Deyrulsafaran monastery at Mardin in a manner consistent with its architectural style (cut stone), but were told that they could proceed if they used other materials, in this case plain concrete. The results can be readily seen upon a visit to the monastery. Besides such problems with the rehabilitation of existing churches, the community faces the confiscation of places of worship declared "unused" by the General Director of Foundations, which sometimes will convert them into mosques. In Istanbul, which has become the principle destination of Syriac migration, there is only one Syriac church, and worshippers are therefore obliged to use the facilities of other communities. Repeated complaints by the Syriac representatives to the authorities, including the President of the Republic and the Prime Minister, have been fruitless. The Syriac community is thus, in practice, denied the right to construct places of worship in Istanbul, despite its evident, urgent and legitimate needs.

118. With respect to other properties, the Syriacs are severely lacking in social, charitable and health institutions, because they are prohibited from opening their own establishments. Petitions addressed to the authorities, including senior government officials, have so far had no success. The same is true for applications to open schools. The Syriac culture, including its religious basis (such as its liturgical language and rites), can only be passed on to the new generation through courses offered in places of worship which, as was pointed out, are non-official schools. It was reported that in 1998 the mayor of Mardin prohibited Syriac religious instruction.

119. When it comes to the religious and ethics courses in the public schools, Syriac children are eligible for exemption. Nevertheless, such exemption poses two kinds of difficulties, particularly in southeastern Turkey: on one hand, parents do not ask for exemption for fear of ostracism, and on the other hand some schools refuse to respect this exemption, even when it has been formally approved in advance.

120. The status of the Syriacs is of particular concern in light of their massive departure from their principal traditional homeland, i.e. southeastern Turkey. The authorities explain this phenomenon exclusively in terms of economic considerations. Syriac representatives, on the contrary, are unanimous in pointing to political and religious factors, particularly the nationalistic policy of Turkization. According to them, this policy translates into a series of limitations and infringements: non-recognition of Syriac religious and cultural identity, occasional banning of the Aramaic language, and the prohibition of community social and educational institutions, as well as the Turkization of Syriac village names and of personal and family names. The situation is aggravated, according to the Syriac representatives, by the current conflict between the Turkish authorities and the Kurdish movements, including the PKK. The position of neutrality that the Syriacs have adopted has been mutually interpreted by the authorities and by the Kurdish movements alike as support for the enemy. Thus, the Syriacs have been subjected repeatedly to attacks by individuals and by armed bands who may take away their goods, abduct their daughters and force them to convert to Islam, and may even commit murder (see the communication of the Special Rapporteur, cited in E/CN.4/1995/91). This climate of violence has forced most Syriacs to leave southeastern Turkey. It must be added that there is social pressure everywhere, and particularly in the Southeast, reflecting a refusal to accept the local Syriac population, who are viewed as not conforming to the nationalist motto of "one nation, one race, one culture". This attitude, unfortunately, extends to certain authorities, particularly at the local level, who betray their rejection of this community in different ways. It must also be noted that there has

been no follow-up to any of the complaints that have been formally laid before the authorities concerning these serious violations of human rights. Most of the time, the central authorities simply deny the situation and invoke the economic underdevelopment of the country's southeastern region as the reason behind this community's departure. These authorities even accuse the Assyro-Chaldeans of fabricating complaints in order to obtain refugee status in Europe. In other cases, where evidence of oppression is particularly glaring, blame will be laid entirely on the PKK, while the local authorities are absolved of any responsibility.

121. When it comes to the situation of the Syriac community in Istanbul, it was found that some Syriacs have adopted a low profile, seeking to protect themselves through a degree of anonymity. Other Syriacs, apparently the majority, are hoping to leave Turkey, because of the rise of Islamism and the obstacles that the authorities are placing in the way of the community's attempts to maintain its religious and cultural identity.

122. While saying that they understand certain shortcomings of the State, and recognizing that it takes time to establish democracy, particularly in the setting of armed conflict that prevails in southeastern Turkey, the Orthodox Syriac representatives have formulated a very significant demand, which is that they be treated as full Turkish citizens, and not as outsiders.

V. Conclusions and recommendations

123. The Special Rapporteur presents below his conclusions and recommendations on Turkish legislation relating to freedom of religion and belief and on Turkish policy in this area, and finally on the situation of non-Muslim communities, in particular, with respect to freedom of religion and belief.

124. The Special Rapporteur is pleased to note that Turkey's legislation, and particularly its constitutional legislation, provides absolute guarantees of freedom of religion and belief and protects its manifestations (in particular freedom of worship), while imposing certain limitations (article 14).

125. Some of these constitutional limitations contain vague expressions that lend themselves to very broad interpretation which, in turn, may lead to extensive intervention by the State and hence excessive restrictions on freedom of religion and belief. This applies to the expression "violating the indivisible integrity of the State with its territory and nation" as well as the phrase "destroying fundamental rights and freedoms".

126. The Special Rapporteur recommends that precise terminology be devised and that legislation, including constitutional provisions, be interpreted in a manner consistent with international standards of human rights and with the jurisprudence and general comments of the United Nations Commission on Human Rights. The Commission, in its General Commentary No. 22 (48) of 20 July 1993, on article 18 of the International Covenant on Civil and Political Rights, declared that restrictions on the freedom to manifest religion or belief are permitted only if they are prescribed by law, are necessary to ensure public safety, order, health or morals, or the fundamental rights and freedoms of others, and are applied in a manner that does not vitiate the right to freedom of thought, conscience and religion. The Commission has also stated that restrictions must only be applied for the purposes for which they were prescribed and they must relate directly to the specific objective they are to serve, and be proportional to that objective. Restrictions may not be imposed for discriminatory purposes or in a discriminatory manner.

127. The Turkish constitution enshrines the principle of secularism in relations between the State and religion. The Turkish Constitutional Court has interpreted this secularism in accordance with the principle of neutrality, whereby, on one hand, religion is a personal affair and, on the other hand, no manifestation of religion may be restricted by the State except under precise conditions, namely the protection of public order and safety and the public interest, and only in a manner consistent with the jurisprudence of the Commission on Human Rights.

128. This interpretation, basing secularism on the principle of neutrality, would seem however to be contradicted by certain constitutional and legislative provisions that empower the State, through the Department of Religious Affairs, to structure Muslim religious affairs and to wield excessive powers of religious management such that religious practice appears to be regimented by the government and Islam is treated as if it were a "State affair". This situation is compounded by the attitude of the State which, in practice, promotes a Hanafi conception of Islam to the exclusion of any other interpretation, including that of

the Alawi rite, in the field of religious and ethical education, for example, but also in the organization and operations of the Department of Religious Affairs.

129. Thus, despite the proclaimed secular nature of the State, the treatment of Islam in Turkey, as described above, tends to give a quasi-official status, or at least a sufficiently prominent position, to Hanafi Islam. Secularism, the cornerstone of the Turkish State, also appears to be compromised by the optional mention of religion on identity cards, and by compulsory religious and ethics instruction. Consistent with the jurisprudence of the Commission on Human Rights, in its General Commentary No. 22 (48), the Special Rapporteur is not to pronounce himself on any State's system of government, whether theocratic or secular, but on its implications in terms of respect, i.e. non-violation, of rights pertaining to religion, belief and the status of minorities. In this light, there are indeed problems of varying degrees of importance, as described above.

130. On this point, the Special Rapporteur considers it essential that the jurisprudence of the Turkish Constitutional Court relating to secularism should be clearly and fully reflected in State policy concerning religion, in order to prevent any interference that would run counter to the limitations prescribed by international law.

131. On the issue of wearing the Islamic veil, in particular, such an approach would provide the authorities with a solid legal basis for addressing their legitimate concerns over the political exploitation of religion, while allowing free expression of dress within legitimate limits established to this end.

132. With respect to the compulsory religious and ethics courses called for in the Constitution, these pose a problem in that they affect:

- Non-Hanafi Muslims who are subjected to instruction that is based on a Hanafi conception of Islam and that does not reflect the diversity of Islamic rites within Turkish society;
- Non-Muslims, both indirectly, by promoting what most non-governmental sources regard as a message that is biased against non-Muslim beliefs, and directly, for those who decline to seek an exemption for fear of ostracism or public pressure, or who may find their exemption refused by certain officials; and
- Non-believers, mainly within the Muslim community.

133. The Special Rapporteur recommends that the authorities take steps to make education an effective vehicle for promoting human rights values, so as to help build a culture of tolerance and thus encourage behaviour consistent with tolerance and non-discrimination. Turkish education, and in particular the compulsory religious and ethics courses, should be free of any ideological framework and any political bias in favour of a particular religious persuasion, so as to guarantee the principle of educational pluralism (see in particular the jurisprudence of the European Court of Human Rights in the *Campbell and Cosans* decision of 25 February 1982, and the *Kjeldsen and others* ruling of 7 December 1976), and thereby respect the constitutional principle that all citizens are equal. It is also important to ensure that internal beliefs themselves may not be regulated or, in other words, that freedom from coercion to have or to adopt a religion or belief and the liberty of parents to ensure religious and moral education cannot be restricted, in accordance with law and with international jurisprudence.

134. With respect to the optional mention of religion on identity cards, the Special Rapporteur recommends that European jurisprudence be followed, and he awaits the results of the steps announced by the Ministry of Foreign Affairs to eliminate this mention.

135. The Turkish Constitution makes the nationalism of Ataturk the foundation stone of the State and elevates it in practice into an official ideology, or even a new religion, with the status of absolute truth. The terms of the issue as formulated in the jurisprudence of the Commission on Human Rights discussed above apply here as well and thus raise the question of respect for the rights pertaining to religion and belief and to minorities. There have been violations against Muslim communities and non-Muslim minorities, arising primarily from a narrow interpretation and application of the principle of nationalism, i.e. in the form of Turkization, that is not always compatible with the right to tolerance and to non-discrimination. The Special Rapporteur recommends that the authorities should establish a clear principle whereby nationalism is not to be used against minority religious communities.

136. When it comes to other legislative provisions, the Special Rapporteur is pleased to note that the Criminal Code punishes any attack on religion and religious manifestations. It should be noted that the penalty is increased in the case of defamation through the media. The Civil Code guarantees the principle of equality between the sexes and the Special Rapporteur looks forward with interest to the results of current efforts to prepare a new Civil Code.

137. Among the laws dealing with freedom of religion and belief, the Special Rapporteur is pleased to note that the 1965 law on the public service and the 1973 law on national education enshrine the constitutional principle of equal access to the public service and to national education, while the 1994 media law seeks to ban any act of blasphemy.

138. Other legislation, however, raises serious questions. For example, the law permitting the authorities to reject any given or family name considered contrary to the national culture would appear to reflect specific limitations and bias against minority communities, inspired by a policy of Turkization. Again, legislation on foundations and on the "non-utilization" of the property of non-Muslim minorities allows the State, in practice, to confiscate these properties. The Special Rapporteur recommends revision of the law on given names and of the law on unused properties to ensure that any expropriation by the State is based, first, on the principle of non-usurpation and, as far as possible, on the principle of consultation or consensus with the groups and communities concerned.

139. Finally, in accordance with the resolutions of the Commission on Human Rights (for example Resolution 1998/77 recognizing the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion) and General Commentary No. 22 (48) of 20 July 1993 of the Commission on Human Rights, and on the basis of the Turkish Constitution, which enshrines freedom of belief, the Special Rapporteur believes that regional characteristics and tensions are not sufficient to justify, in Turkey or anywhere else, a categorical rejection of conscientious objections, and recommends that legislation be adopted to guarantee the right to conscientious objections, particularly for religious beliefs.

140. The Treaty of Lausanne guarantees the principle of equality for all citizens, including non-Muslims, in the enjoyment of fundamental rights and freedoms, including religious freedom. Moreover, it accords to non-Muslims a minority status entitled to civil, political and cultural rights. This Treaty, however, suffers from certain gaps and weaknesses in the sense that the minorities concerned are not specified in even an indicative way. A logical interpretation would include all non-Muslim communities that were present in Turkey at the time the Treaty of Lausanne was signed. Yet the interpretation given by the Turkish authorities is restrictive and limited to the Armenians, the Orthodox Greeks and the Jews, and thus does not cover other communities that existed in Turkey even before the establishment of the Turkish Republic, such as the Assyro-Chaldeans and the non-Armenian Catholics. It is important to note that the notion of minority in enshrined only in the Treaty of Lausanne and is not recognized in any Turkish legislation, which means that minority Muslim communities and non-Armenian Protestant communities that have recently been established in Turkey are excluded.

141. The Treaty of Lausanne also declares general principles that require legislation and regulation to give them effect. It will be recalled that article 37 of the Treaty commits Turkey to ensure that provisions concerning non-Muslim minorities will be recognized as basic laws. Yet the minorities recognized as covered by the Treaty of Lausanne are affected, on one hand, by a juridical void in certain areas and, on the other hand, by legislation, regulations, jurisprudence and internal practice inconsistent with the Treaty of Lausanne (see sect. III and IV). The Special Rapporteur therefore recommends that the authorities accord the Treaty of Lausanne its rightful scope, and that they give it full application in domestic law and national practice. The Special Rapporteur also recommends to the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights that it decide, in light of international law, the interpretation that should be given to the notion of minorities in the context of the Treaty of Lausanne, and in particular that it identify the communities covered by the Treaty.

142. The policy of the Turkish State in matters of religion and belief, it must be said, is exceedingly complex and stands in sharp contrast with the categorical assertion by certain authorities that such policy is a model of tolerance and non-discrimination.

143. As Turkish history since the foundation of the Republic clearly demonstrates (and as is perhaps to be expected), the relationship between religion and secularism has never been an idyllic one. Nor, from the legal viewpoint, has it been governed by the principles of separation and neutrality. Secularism was vigorously enforced against religion until 1946, but with the introduction of a multiparty system in 1945 electoral competition led at times to the political manipulation of religion, and concessions began to be made to religion vis-à-vis secularism (for example, the victory of the Democratic Party in 1950 was seen by many as a triumph of religion over atheism, while in 1974 the role of the National Salvation Party in government resulted in the multiplication of schools for preachers and a pro-Islamic revision to school textbooks) and at other times to a reaffirmation of secularism over, or even against, religion (for example the military coup of September 1980, which claimed to be inspired by Kemalism).

144. In addition, attention must be drawn to the vigorous survival of religious traditions in rural areas, despite the coming of the Republic and of policies promoting modernization and education. Moreover, recent years have witnessed a renewed search for a strong Islamic identity in the major urban centres, where people have been more receptive to secular notions. Attention must also be drawn to the rise and expansion of Islamism, which is making itself felt particularly in heightened political militancy, the danger of which cannot be underestimated.

145. Finally, the active policy of Turkization, as an expression of nationalism, has meant that the great majority of society has come to regard citizenship solely in terms of Turkish ethnicity and Muslim identity.

146. Politics is thus the determining element with respect to religion: on one hand, the State, the guardian of secularism and defender of nationalism, has taken over responsibility for the majority religion, both within its own ranks and among the population, while on the other hand the political parties, including those of Islamist persuasion, use religion as a route to power. This situation not only affects strictly religious affairs but also has an impact on secularism and on healthy nationalism, and hence on all religious communities.

147. With respect to the majority, the Special Rapporteur understands the legitimate concerns of the authorities in the face of religious extremism, which cannot be tolerated since it leaves no room for human rights and stifles all expressions of diversity and pluralism. The Special Rapporteur nevertheless believes that the active role played by the State in religious affairs constitutes excessive interference not only in the way people manifest their belief but also against the very concept of freedom of religion and belief. This is true, for example, with the compulsory religious and ethics courses that have on occasion become tools of ideological indoctrination (see above). This situation weighs most heavily upon the minority Muslim communities, including the Alawi, in the sense that State intrusion into Muslim religious affairs leaves no room for the specific needs of the Alawis, particularly in terms of places of worship and religious education. Moreover, Turkization policies reinforce the discriminatory treatment of Alawis within Turkish society and even within the State (they have, for example, no representation in the Department of Religious Affairs).

148. When it comes to non-Muslims, with the notable exception of the Jewish minority, their situation poses a problem in terms of the principles of tolerance and non-discrimination, and is a direct result of State policies on secularism and nationalism, analyzed above. The political manipulation of nationalism (which may be linked, in part, to external events such as the European powers' intervention at the end of the Ottoman Empire on behalf of the Christian minorities, or to the Cyprus question) has made itself felt in particular, and in an intolerant and discriminatory way, against the Christian minorities. This particular form of nationalism pervades not only State institutions but society as a whole, and generally conveys a message that leaves no room for the Christian minorities. These policies have sparked the massive departure of members of these minorities from Turkey. The Special Rapporteur has examined the situation, distinguishing between the communities deemed to be covered by the Treaty of Lausanne and recognized as minorities, and those excluded from this category.

149. With respect to the Christian, Greek Orthodox and Armenian (Orthodox, Catholic and Protestant) minorities, it is useful to examine the situations that they face in common, as well as the specific circumstances of each group.

150. In the first place, representatives of these minorities say that they enjoy freedom of religion and worship but that they face problems affecting the

religious affairs of their community. The Greek Orthodox and the Armenian Orthodox Patriarchates and the Armenian Catholic and Protestant churches, however, do not have the status of corporate legal entities. They must therefore rely on foundations to acquire and manage their property. Yet these foundations are, on the whole, becoming increasingly ineffective because of the attitude of State institutions and the courts: the General Directorate of Foundations has been unilaterally confiscating the property of foundations, and other authorities have been preventing the election of boards of directors. The properties of these minorities are thus in a position where their future is very much in doubt, and indeed some have been confiscated, thereby depriving these communities of their principal source of revenue. With respect to educational institutions, minorities no longer have religious seminaries, and this poses a real threat to their ability to renew the ranks of their clergy and hence undermines the religious leadership and management of these communities. The Christian minorities face a number of difficulties with their schools: in some cases the authorities refuse to appoint headmasters from the community, and they are not allowed to accept students from outside their own community (which poses a particular problem for Armenian Catholic and Protestant children whose status is not recognized by the authorities — see para. 94). The procedures for electing Greek Orthodox and Armenian patriarchs also appear to have been affected, at various times, by interference from the authorities. Finally, freedom of worship is recognized for these minorities but is restricted to their places of worship, and any public show of religion is in fact severely discouraged by the authorities.

151. The specific situation of each minority may be described as follows:

152. As to the Greek Orthodox community, it must be said that it is slowly disappearing. Apart from the obstacles and the attacks discussed above, this fact can be explained by Turkey's religious policy, by limits on the citizenship status of Orthodox Greeks, and by the climate of insecurity felt by this community, given the State's failure to fulfil its responsibilities. Of course, this situation is primarily the result of relations between Turkey and Greece through the course of history, and in particular over the Cyprus issue, for which the Turkish Greek Orthodox community seems to be the scapegoat.

153. As to the Armenian minority (Orthodox, Catholic and Protestant), despite the fact that it is numerically the most important Christian community in Turkey, its position appears to be fragile and vulnerable. This situation, resulting from the facts presented above and from other particular problems (see paras. 80 to 95, in particular the problem of the taxes imposed on Armenian foundations, para. 88), reflects primarily the historical burden of relations between Turkey, heir to the Ottoman Empire, and the Armenian community in Turkey, in Armenia, and abroad.

154. As to the Jewish minority, the Special Rapporteur notes that its representatives have insisted that its situation is satisfactory. This may be explained in large part by the fact that, in contrast to the Armenians and the Greeks, the Jews have made no claim to lands within Turkey, and also by the close relations between Turkey and Israel.

155. As to the Christian minority communities not recognized by the Turkish authorities as covered by the Treaty of Lausanne, their situations vary greatly.

156. The non-Armenian Catholics enjoy freedom of religion and worship, but they encounter the same difficulties and obstacles as those facing "official" minorities. This community is therefore very fragile.

157. The Turkish Protestant Church faces numerous difficulties related both to its recent establishment in Turkey and to its religious activism. It has been denied legal recognition and cannot conduct its activities officially as a Protestant community (notably when it comes to acquiring places of worship and other properties). Its increasingly visible expansion arouses negative reactions, particularly among the authorities, who are committed to a restrictive interpretation of secularism and nationalism (and who have closed places of worship and ordered arrests).

158. The Syriacs, and in fact the entire Assyro-Chaldean community, seem to be gradually disappearing. In the first place, this community faces all of the problems described above: they are not recognized as a minority under the Treaty of Lausanne, although they have been present in Turkey for centuries; they have no legal status as a community; they are denied the right to their own educational, social, charitable and health institutions, and have no religious training seminaries; their places of worship are subject to confiscation and they are prevented from renovating those properties or from building new ones.

In addition, they have on a number of occasions been denied the right to teach the Syriac religion, even within their churches and monasteries, while their demands for exemption from religious instruction in the public schools are often ignored. All of these obstacles and restrictions can be explained essentially by the policy of Turkization and by the failure to recognize the Assyro-Chaldeans as a distinct religious and cultural community. To these factors must be added the impact of the armed conflict between the Turkish authorities and Kurdish insurrectionists that has placed the Assyro-Chaldeans in a climate of constant fear from acts of terrorism (assault, robbery, assassination, abduction, forced conversion to Islam, etc.) and has provoked their massive departure from southeastern Turkey. It is also true that this community is rejected by society and by the local authorities, who are generally intolerant of any minority that does not conform to the stereotyped imperatives of the Turkization policy (i.e. to be Turkish by ethnic origin and to be Muslim by religion). This situation is at its worst in eastern Turkey, but it is also reflected in Istanbul, where most Assyro-Chaldeans migrate, and where the rise of Islamism is also viewed as a threat. Finally, the Assyro-Chaldeans feel that they are treated as foreigners, and in growing numbers they are leaving Turkey in the hope of preserving their cultural and religious identity.

159. The Special Rapporteur recommends that the authorities guarantee, respect and protect the rights of minority religious communities.

160. The following recommendations are made to the Turkish authorities with respect to the Christian, Greek Orthodox and Armenian minorities:

(a) The Government should take all necessary steps to prevent and eliminate the discrimination that results from the progressive and de facto refusal to grant and allow the use of an appropriate legal entity structure: this situation affects a whole range of legitimate religious activities such as the acquisition and management of property, financial support of the clergy and other religious personnel, etc.

(b) The Government should ensure that the legal entity structure itself, in this case the foundations, responds to the basic needs of minorities (and they should remove any obstacle to the functioning of these foundations, such as legal and de facto restrictions on the election and replacement of boards of directors) and if necessary they should improve this legal mechanism, or even grant legal status to the religious leadership of these communities, i.e. the Patriarchate, if these foundations should be found ineffective or inappropriate.

(c) In addition to the recommendation concerning legislation on unused properties, the Government should ensure that public institutions, in particular the General Director to Foundations, do not discriminate against Christian minorities. It is essential that these institutions should cease to deprive these minorities of their property and the resources needed for them to function and to conduct their religious activities.

(d) The Government should guarantee minorities the right to establish and maintain their own places of worship, and should allow them to build such facilities in places where new communities have taken root. Any limitations in this respect, for example urban development regulations, should be consistent with international jurisprudence (see General Commentary of the Commission on Human Rights), and this means that any non-conforming regulations should be repealed or revised.

(e) The Government should guarantee minorities the right to teach their religion, in places suitable for this purpose, and to train their clergy. The Special Rapporteur believes it indispensable that minorities once again have their own religious seminaries, in accordance with article 6 of the 1981 Declaration and the General Commentary No. 22 (48) of the Commission on Human Rights ("the practice and teaching of religion and belief includes acts integral to the conduct by religious groups of their basic affairs, such as, inter alia, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminars or religious schools...").

(f) The Government should guarantee the proper functioning of minority educational establishments, by removing obstacles to the appointment of headmasters. The issue of enrolment for children not belonging (or not recognized by the authorities as belonging) to the minority running these establishments (as is the case with Armenian children) should be examined by the Working Group on Minorities of the Sub-Commission on the Promotion Protection of Human Rights, and by the Special Rapporteur on Education.

(g) The Government should guarantee non-intervention in the internal affairs of minorities, in particular in the election and appointment of religious leaders.

161. With respect to all of the above points, the Special Rapporteur believes that the State should establish precise rules to protect the fundamental rights of minorities, as derived from the Treaty of Lausanne and from international law. These rules should be defined in consultation with minority representatives, they should be guaranteed in the form of regulations and laws and they should be enforced by policies and administrative actions that are respectful of minority rights.

162. With respect to the Greek Orthodox and Armenian minorities, the Special Rapporteur considers it essential that the guarantee of their rights should not be conditional upon the status of relations between Turkey and Greece, on one hand, and of those between Turkey and Armenia and its diaspora, on the other. In this regard, the State must live up to its responsibilities to protect minorities against all acts of aggression and violence.

163. With respect to the minority communities not recognized as such or not deemed to be covered by the Treaty of Lausanne, the recommendations outlined above are relevant for non-Armenian Catholics.

164. With respect to the non-Armenian Protestants, the Special Rapporteur recommends that the Government provide a full guarantee of this religious community's rights. To this end, owing to the fact that the enjoyment of rights to religious freedom depends in critical ways on the legal structures available to religious communities to organize their affairs, it is essential for the Protestants to have appropriate legal mechanisms for acquiring and managing their own properties, including places of worship. It would seem that the current device, i.e. the creation of associations, is inadequate in light of existing legal restrictions that make it impossible to establish religious associations. In any event, a legal entity that will meet the needs and respect the rights of all religious communities is strongly recommended. This would also help to minimize the risk of interference by the authorities, especially the police.

165. The recommendations for treating Protestants as a legal entity are equally applicable to the Assyro-Chaldeans and are in fact essential for maintaining the cultural and religious identity of this community. Regardless of the issue of recognition of its minority status, this community has a legal structure that allows it to have its own educational, social and religious training institutions. As in the case of the Armenian minority, the Special Rapporteur recommends that the Government should satisfy legitimate demands for the construction of new places of worship, in particular in Istanbul. It is also urgent to put a stop to the arbitrary and discriminatory confiscation of Assyro-Chaldean places of worship by the General Directorate of Foundations and to the abuse of power in procedures for authorizing the renovation of religious establishments. The recommendations made with respect to instruction and religious culture are relevant here as well. Furthermore, while appreciating the situation created by the armed conflict in southeastern Turkey, the Special Rapporteur believes that the State must fulfil its responsibilities to protect the Assyro-Chaldeans and to identify and prosecute those who violate their human rights.

166. The Special Rapporteur also offers the following general recommendations, applicable to all religious communities in Turkey:

(a) The Government should ensure that Islam does not become a political tool, a situation that could escalate in ways that would promote religious extremism;

(b) The Government should combat all manifestations of intolerance whenever they appear;

(c) The Government should combat extremism in all religions, wherever it appears, while respecting international human rights standards and being careful not to affect minority religious communities, directly or indirectly, in the enjoyment of their legitimate rights and freedoms;

(d) The Government should take all necessary measures, consistent with international human rights standards, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by religious intolerance;

(e) The Government should ensure both more legal protection against discrimination based on religion or belief, and the implementation and respect of these legal safeguards;

(f) The interpretation of the constitutional principles of secularism and nationalism, and policies

for implementing them, must not affect religious communities, and in particular minority religious communities, whether in their enjoyment of their rights, including religious rights (deriving either from minority status or from citizenship) or in their ability to integrate naturally into Turkish society, of which they are a fundamental component, and they must be allowed to maintain their own identity;

(g) Minority religious communities should be protected from any political manipulation in the context of Turkey's foreign affairs;

(h) The Government should undertake a true dialogue with minority religious communities so as better to understand their needs and to promote a climate of respect and trust;

(i) The Government should provide for the effective protection and promotion of religious diversity, by ensuring respect for diversity both between and within different religions. It is particularly important that the State should allow room for the Alawis to express their religion;

(j) A broad campaign should be undertaken to educate and sensitize society and its different components to the values and principles of tolerance and of non-discrimination with respect to minority religious communities and to counter religious fanaticism, whether in the media, in the schools (curricula and textbooks) or in political debate. In this respect, it is particularly important for the Government to ensure that religious instruction, whatever the religion concerned, provided in public and private institutions alike is such as to foster tolerance and non-discrimination and that it is not used to promote extremism and intolerance;

(k) Turkey should take advantage of the technical cooperation services of the United Nations High Commissioner for Human Rights in the area of freedom of religion and belief, with particular attention to minorities.

Annex

Meeting of Religions in an Era of Faith and Tolerance (Tarsus, 10 and 11 May 2000)

We would like to state that the "Meeting of Religions in an Era of Faith and Tolerance" which took place between 10-11 May 2000 in Tarsus, under the auspices of the Presidency of Religious Affairs is a universal step contributing to peace for the people of our country and for humanity. The site of the meeting, Tarsus, is significant because this town is not only a part of Anatolia which is a cradle for many cultures and religions but also a place where leaders of Christian religion such as St. Paul, prominent figures of Islam and some Prophets chose to live.

Religion is a significant reality, which seriously influences human life. To put it differently, religious conviction is one of the most important causes of social differentiation.

We would like to declare to the world once more that we live in peace and repose today as members of different religions in this country where many historical experiences occurred and people from various origins and religions co-existed in peace and lived together. While stating this we do not overlook the existence of certain difficulties.

There are some problems regarding freedom of religion and conscience, freedom of faith, education, culture and religious practices in all parts of the world. However, these problems are not insurmountable. Significant progress is being observed in the process of democratisation. Impacts of these developments can only be overcome by patience and tolerance. We are happy to observe that representatives of religions have the intention of co-operation in this process. The "International European Union Council" meeting, 3-7 May 2000, Istanbul and the "Meeting of Religions in an Era of Faith and Tolerance" 10-11 May 2000, Tarsus, both of which were organized by the Presidency of Religious Affairs are clear indications of a good intention in this regard.

History provides us with many examples, which show that different religions and ideas lived together in peace. However, history also shows us that there have been conflicts and wars between religions. We also know that even co-religionists have disputes and conflicts among themselves. Yet, what causes conflicts and creates hostility among us is not our religious faith but those who fail to understand their religions properly, adopt an extremist path or use their religions for their own interests.

Moreover, misunderstanding or lack of information about other religions also contributes to these conflicts.

Solution of these problems requires teaching of all religions correctly as well as teaching other religions neutrally. As religious representatives who are aware of our responsibilities, we would like to emphasise that we are determined to work together to remove the errors.

Inter-religious dialog does not mean to unite religions or melt them in a pot. Inter-religious dialog is a search to discuss issues of common interest and an effort to find ways of cooperation in tolerance and mutual understanding while preserving all differences without forcing one another.

During the process of this search one should emphasise common interests rather than differences. Therefore religious leaders have important tasks in this process. Indeed it is well known that Abrahamic religions to which we belong, invite human beings to peace and love. Religious leaders and clergy should spread messages of peace and love in an age when humanity is in need of these more than ever.

Members of religions should also work together against dangers such as atheism, drugs, hunger, war, violence, terrorism and xenophobia which cause disappearance of love among people.

We declare our wish to the public with respect that the common step we have taken here with this belief and determination should be continued.

Mehmet Nuri **Yilmaz**, President of Religious Affairs of Turkey

Bartolemeos I, Greek Orthodox Patriarch, Istanbul

Mesrob II, Patriarch of Turkish Armenians

Ishak **Haleva**, Vice Chief Rabbi in Turkey

Metropolitan Filüksinos Yusuf **Çetin**, Vice Patriarch of the Syriac Orthodox Community

Louis **Pelatre**, Spiritual Leader of the Latin Community, Istanbul

Kostantin **Kostof**, Priest, Bulgarian Orthodox Church

Yusuf **Sağ**, Vice Patriarch of the Syriac Catholic Community

François **Yakan**, Vice Spiritual Leader of the Chaldean Community

Apraham **Firatyan**, Vice Spiritual Leader of the Catholic Community (Armenian)